

REMARKS

Claims 1-30 are presently pending in this application. Claims 1, 8, 15, and 19 have been amended. No new matter has been added. Favorable reconsideration and allowance of the pending claims are respectfully requested.

While Applicant disagrees with the broad grounds of rejection presented in the Office Action, Applicant has amended the independent claims in order to expedite prosecution on the merits.

In particular, independent claim 1 has been amended to recite "generating a summary envelope waveform by aligning the input envelope waveform and the output envelope waveform and calculating data points by comparing the input and output envelope waveforms; and plotting the summary envelope to indicate lost audio packets."

Independent claim 8 has been amended to recite "generating a summary envelope waveform by aligning the input envelope waveform and the output envelope waveform and calculating data points by subtracting the output envelope waveform from the input envelope waveform; and plotting the summary envelope to indicate lost audio packets."

Independent claim 15 has been amended to recite "generate a summary envelope waveform by aligning the input envelope waveform and the output envelope waveform and calculating data points by subtracting the output envelope waveform from the input envelope waveform; and plot the summary envelope to indicate lost audio packets."

Independent claim 19 has been amended to recite "a data loss summary envelope by aligning the input envelope waveform and the output envelope waveform and calculating data points by comparing the input and output envelope waveforms, and

Appl. No. 09/541,046
Response Dated August 30, 2005
Reply to Office Action of June 1, 2005

further wherein the audio analyzer plots the data loss summary envelope to indicate lost audio packets.”

In the Office Action, claims 1-5, 6, 8, 9, 13, 15, 17, 19, 23-26, and 29 were rejected under 35 U.S.C. § 102(e) as being anticipated by United States Patent Number 6,275,797 to Randic (“Randic”). Applicant traverses the rejection.

Applicant respectfully submits that to anticipate a claim under 35 U.S.C. § 102(e), the cited reference must teach every element of the claim. *See e.g.*, MPEP § 2131.

Applicant submits that Randic fails to teach each and every element recited in amended independent claims 1, 8, 15, and 19. Applicant submits that claims 1, 8, 15, and 19 are allowable for at least this reason and that claims 2-5, 6, 9, 13, 17, 23-26, and 29 are allowable by virtue of their dependency, as well as on their own merits.

Accordingly, removal of the § 102(e) rejection of claims 1-5, 6, 8, 9, 13, 15, 17, 19, 23-26, and 29 is requested.

In the Office Action, claims 7, 14, 18 and 20-22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Randic in view of United States Patent Number 6,775,240 to Zhang et al. (“Zhang”). Applicant traverses this rejection.

According to MPEP § 2143, three basic criteria must be met to establish a *prima facie* case of obviousness. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be

Appl. No. 09/541,046
Response Dated August 30, 2005
Reply to Office Action of June 1, 2005

found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). *See* MPEP 706.02(j).

In the Office Action, Zhang was relied upon as disclosing a "system and method for measuring quality of communications over packet networks including test analyzer and A-D and D-A equipment with resolution of at least 16 bits. See column 5 and Figure 1." As such, the relevant part of Zhang cannot remedy the deficiencies of Randic with respect to amended independent claims 1, 8, 15, and 19.

Even if Randic could be combined with Zhang, which Applicant does not admit, such combination fails to teach or suggest all of the features of independent claims 1, 8, 15, and 19 and thus is insufficient to establish a *prima facie* case of obviousness with respect to the independent claims. Moreover, Applicant submits that there is no motivation to combine the teaching of Randic with Zhang and that there is no reasonable expectation of success to make such combination.

For at least the reasons set forth above, Applicant submits that the amended independent claims are non-obvious and represent patentable subject matter in view of the cited references, whether taken alone or in combination. Applicant reminds the Examiner that if an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious. *See e.g.*, MPEP § 2143.03.

Accordingly, removal of the § 103(a) rejection of claims 7, 14, 18, and 20-22 is requested.

In the Office Action, claims 10-12, 16, 27, 28 and 30 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Randic in view of United States Patent Number 6,026,350 to Tustin et al. ("Tustin"). Applicant traverses this rejection.

Appl. No. 09/541,046
Response Dated August 30, 2005
Reply to Office Action of June 1, 2005

In the Office Action, Tustin was relied upon as disclosing "measurement of oscilloscope and specialized type of analyzers presenting captured waveforms where self-framing serial trigger circuit producing serial trigger signal applied to channels. See column 1, lines 5-26, column 2, lines 61-67, and columns 3-4." As such, the relevant part of Tustin cannot remedy the deficiencies of Randic with respect to amended independent claims 1, 8, 15, and 19.

Even if Randic could be combined with Tustin, which Applicant does not admit, such combination fails to teach or suggest all of the features of independent claims 1, 8, 15, and 19 and thus is insufficient to establish a *prima facie* case of obviousness with respect to the independent claims. Moreover, Applicant submits that there is no motivation to combine the teaching of Randic with Tustin and that there is no reasonable expectation of success to make such combination.

For at least the reasons set forth above, Applicant submits that the amended independent claims are non-obvious and represent patentable subject matter in view of the cited references, whether taken alone or in combination. Applicant reminds the Examiner that if an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious. *See e.g.*, MPEP § 2143.03.

Accordingly, removal of the § 103(a) rejection of claims 10-12, 16, 27, 28, and 30 is requested.

Applicant submits that the application is in condition for allowance. Favorable reconsideration and allowance of the pending claims are respectfully requested.

Applicant does not otherwise concede, however, the correctness of the Office Action's rejection with respect to any of the dependent claims discussed above.

Appl. No. 09/541,046
Response Dated August 30, 2005
Reply to Office Action of June 1, 2005

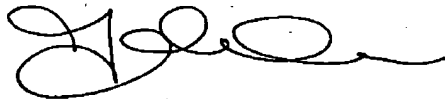
Accordingly, Applicant hereby reserves the right to make additional arguments as may be necessary to further distinguish the dependent claims from the cited references, taken alone or in combination, based on additional features contained in the dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

The Examiner is invited to contact the undersigned at 724-933-3387 to discuss any matter concerning this application.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. § 1.16 or § 1.17 to Deposit Account No. 02-2666.

Respectfully submitted,


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Under 37 CFR 1.34(a)

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8/29/05

Date

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